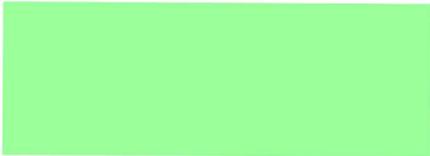




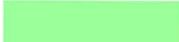
U.S. Citizenship  
and Immigration  
Services

(b)(6)



Date: **AUG 06 2013**

OFFICE: OAKLAND PARK, FL

FILE: 

IN RE: 

APPLICATION: Application for Certificate of Citizenship under section 320 of the Immigration and Nationality Act; 8 U.S.C. § 1431

ON BEHALF OF APPLICANT:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case.

This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions. If you believe the AAO incorrectly applied current law or policy to your case or if you seek to present new facts for consideration, you may file a motion to reconsider or a motion to reopen, respectively. Any motion must be filed on a Notice of Appeal or Motion (Form I-290B) within 33 days of the date of this decision. **Please review the Form I-290B instructions at <http://www.uscis.gov/forms> for the latest information on fee, filing location, and other requirements.** See also 8 C.F.R. § 103.5. **Do not file a motion directly with the AAO.**

Thank you,

A handwritten signature in black ink, appearing to read "Ron Rosenberg", written over a large, stylized circular flourish.

Ron Rosenberg  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The Form N-600, Application for Certificate of Citizenship (Form N-600) was denied by the Field Office Director (the director), Oakland Park, Florida. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant was born in Saint Lucia on May 14, 1995, to married parents. The applicant's parents divorced on August 22, 2005. On August 17, 2010, the applicant was admitted into the United States as a lawful permanent resident. The applicant's mother became a naturalized U.S. citizen on October 21, 2010. His biological father is not a U.S. citizen. The applicant seeks a certificate of citizenship pursuant to section 320 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1431, based on the claim that he derived U.S. citizenship through his mother.

In a decision dated January 24, 2013, the director determined that the applicant had failed to establish that his mother was awarded legal custody over him, or that he resided in the legal custody of his U.S. citizen mother, as required by section 320(a)(3) of the Act. The application was denied accordingly.

On appeal, the applicant asserts that his father relinquished custody over him to his biological mother and his stepfather in December 2009, and that the Service recognized that his mother and stepfather had legal custody over him when he was accorded U.S. lawful permanent resident status in August 2010. In support of his assertions, the applicant resubmits a December 2009 letter from his father relinquishing custody over the applicant to his biological mother and his stepfather. The applicant also requests that his Form I-290B, Notice of Appeal or Motion filing fee be refunded, on the basis that the Service erroneously denied his Form N-600 application.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d. Cir. 2004). The entire record was reviewed and considered in rendering a decision on the appeal.

The jurisdiction of the AAO is limited to that authority specifically granted through the regulations at Volume 8 of the Code of Federal Regulations (8 C.F.R.) section 103.1(f)(3)(iii) (as in effect on Feb. 28, 2003) and subsequent amendments. The regulatory authority of the AAO does not include authority to order the return of the applicant's appeal fee.

Section 320 of the Act provides, in pertinent part, that:

(a) A child born outside of the United States automatically becomes a citizen of the United States when all of the following conditions have been fulfilled:

- (1) At least one parent of the child is a citizen of the United States, whether by birth or naturalization.
- (2) The child is under the age of eighteen years.
- (3) The child is residing in the United States in the legal and physical custody of the citizen parent pursuant to a lawful admission for permanent residence.

Legal custody vests “[b]y virtue of either a natural right or a court decree.” *Matter of Harris*, 15 I&N Dec. 39, 41 (BIA 1970). In the absence of a judicial determination or grant of custody in a case of a legal separation of the naturalized parent, the parent having actual, uncontested custody of the child is to be regarded as having “legal custody”. See *Matter of M*, 3 I&N Dec. 850, 856 (BIA 1950).

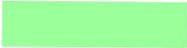
In the present matter the record contains a September 15, 2005, “Certificate Making Decree Nisi Absolute” (certificate) from the High Court of Justice, Saint Lucia. The certificate refers to a May 20, 2005 decree between the applicant’s parents “whereby it was decreed that the marriage . . . be dissolved unless sufficient cause be shown to the Court within three (3) months from the making thereof why the said decree should not be made absolute[.]” The certificate states that no cause against divorce was shown, and the applicant’s parent’s divorce was made final and absolute as of August 22, 2005.

An unsigned and undated, “Statement as to Arrangements for Child of the Family” filed on May 12, 2004 with the High Court of Justice, Saint Lucia, states that the applicant will reside with his father; that his father will provide for the education and maintenance of the applicant; and that the applicant’s mother will be “allowed access to the child at all times” and will contribute to the applicant’s maintenance in accordance with a court order.

The applicant’s biological father states in a letter dated December 22, 2009, that he is the applicant’s “custodian,” that he relinquishes custody of the applicant to the applicant’s mother and stepfather, and that he gives permission for the applicant to immigrate to the United States to be cared for by his mother and stepfather.

The regulation at 8 C.F.R. § 341.2(c) states that the burden of proof shall be on the claimant to establish his or her claimed citizenship by a preponderance of the evidence. The “preponderance of the evidence” standard requires that the record demonstrate that the applicant’s claim is “probably true,” based on the specific facts of each case. *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010) (citing *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989)). Even where some doubt remains, an applicant will meet this standard if she or he submits relevant, probative and credible evidence that the claim is “more likely than not” or “probably” true. *Id.* (citing *INS v. Cardoza-Fonseca*, 480 U.S. 421, 431 (1987)).

Upon review, the AAO finds that the applicant has failed to establish by a preponderance of the evidence that his U.S. citizen mother was awarded legal custody over him, or that he resided in the legal custody of his U.S. citizen mother. Notably, the record does not contain the applicant’s parent’s May 2005 divorce decree or a child care court order referred to in the “Statement as to Arrangements for Child of the Family.” The evidence that is contained in the record, however, strongly suggests that a judicial determination and grant of custody over the applicant was ordered when the applicant’s parents divorced. The “Statement as to Arrangements for Child of the Family” filed with the court in May 2004 indicates that child custody arrangements were addressed in the divorce proceedings, and that legal and physical custody over the applicant may have been awarded to the applicant’s father. The December 2009 letter from the applicant’s father also suggests that the



applicant's father was awarded custody when the applicant's parents divorced. It is further noted that the December 2009 letter is a private document, and does not constitute a court order or legal amendment to a court order awarding care and protection over the applicant to his father.

Because the applicant has not met his burden of proof, as required by 8 C.F.R. § 341.2(c), the appeal will be dismissed.<sup>1</sup>

**ORDER:** The appeal is dismissed.

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<sup>1</sup> The present decision is without prejudice to the applicant's filing a Form N-400, Application for Naturalization pursuant to section 316 of the Act, 8 U.S.C. § 1427, if eligible.